

The opinion in support of the decision being entered today was **not** written for publication in a law journal and is **not** binding precedent of the Board.

Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARK WAYNE SEES, WILL RUSS, LEE D. BENGSTON,
and CLINTON A. WAGNER

Appeal No. 1998-1473
Application No. 08/493,741

ON BRIEF

Before JERRY SMITH, BARRETT and BARRY, Administrative Patent Judges.

BARRY, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the rejection of claims 1-42. We reverse.

BACKGROUND

The invention at issue in this appeal relates to restoring a telecommunications network in response to a fault therein. A self-healing network, distributed restoration

algorithm restores traffic that has been disrupted by a fault in such a network by finding an alternate route to carry the traffic to bypass the fault. A limited number of spare links are included in the network for restoration. More specifically, the alternate route is established by interconnecting some or all of the spare links so that traffic may be rerouted therethrough.

The spare links, called "a spare capacity," provide a limited safety margin for distributed restoration to take place. If the network were to remain in the topology that includes the use of the spare links, its ability to restore traffic after other faults would be curtailed.

The appellants' invention automatically reconfigures the topology of a telecommunications network back to its normal state after repair of a fault resulting in a distributed restoration. In general, after such a repair, an Operation Support System commands the custodial nodes and the tandem nodes forming an alternate route to perform the inverse of the operation that the nodes performed during the restoration.

More specifically, the custodial nodes are first commanded to perform their inverse operations so that the repaired link again connects the custodial nodes. A path verification process is next performed to ensure the integrity of the newly repaired path. Once the integrity of the repaired path is confirmed, each of the tandem nodes is commanded to perform their inverse operations to disconnect cross-connected ports within the tandem nodes.

Claim 1, which is representative for our purposes, follows:

1. In a telecommunications network having a plurality of nodes interconnected by a plurality of working and spare links, after functionality of at least one failed working link is restored by a distributed restoration scheme, a method of automatically reconfiguring said network to the topology it had before said one working link failed, comprising the steps of:

(a) identifying each of the nodes having performed two cross-connect operations for rerouting traffic traveling on a route including said one failed working link to an alternate route as custodial nodes bracketing said one failed working link;

(b) identifying at least one node to which respective connections via corresponding spare links were made by said custodial nodes to establish said

alternate route when said one working link failed as a tandem node;

(c) identifying in each of said custodial nodes the port to which one end of said failed working link is connected, the port to which one of said respective spare links to said tandem node is coupled, and the port through which traffic on said route is routed to other nodes of said network; and

(d) disconnecting said traffic routed through port from said spare link coupled port and cross-connecting said traffic routed through port to said failed working link connected port in each of said custodial nodes.

The reference relied on in rejecting the claims follows:

Mansour et al. (Mansour)	5,058,105	Oct.
15, 1991.		

Claims 1-42 stand rejected under 35 U.S.C. § 103 as obvious over Mansour. Rather than repeat the arguments of the appellants or examiner in toto, we refer the reader to the briefs and answer for the respective details thereof.

OPINION

In deciding this appeal, we considered the subject matter on appeal and the rejection advanced by the examiner. Furthermore, we duly considered the arguments and evidence of

the appellants and examiner. After considering the totality of the record, we are persuaded that the examiner erred in rejecting claims 1-42. Accordingly, we reverse.

We begin by noting the following principles from In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993).

In rejecting claims under 35 U.S.C. Section 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).... "A prima facie case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art." In re Bell, 991 F.2d 781, 782, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993) (quoting In re Rinehart, 531 F.2d 1048, 1051, 189 USPQ 143, 147 (CCPA 1976)). If the examiner fails to establish a prima facie case, the rejection is improper and will be overturned. In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988).

With these principles in mind, we consider the examiner's rejection and the appellants' argument.

Recognizing that Mansour does not teach reinstating traffic to its original route once a failed link is restored, the examiner concludes, "it would have been obvious ... to

perform the steps which are reverse of [sic] those described in Mansour (claimed steps), in order to restore Mansour's Network to its original state, once Link 103 is restored." (Examiner's Answer at 4.) The appellants argue, "to suggest that the reversing of the steps of the Mansour method is the same as the claimed invention is believed to be totally without merit.... [T]here is not the slightest scintilla of evidence in the prior art suggesting the claimed invention" (Appeal Br. at 11.)

The examiner fails to show a suggestion of the claimed limitations in Mansour. He admits, "[t]he reference differs from the claims in the fact that it does not address the subject of reinstating the traffic to its original route once failed link 103 is restored." (Examiner's Answer at 4.) Faced with this deficiency, the examiner opines, "it would have been obvious to one of ordinary skill in the art at the time the invention was made to perform the steps which are reverse of [sic] those described in Mansour (claimed steps), in order to restore Mansour's Network to its original state, once Link 103 is restored." (Id.)

"Obviousness may not be established using hindsight or in view of the teachings or suggestions of the inventor." Para-Ordnance Mfg. v. SGS Importers Int'l, 73 F.3d 1085, 1087, 37 USPQ2d 1237, 1239 (Fed. Cir. 1995)(citing W.L. Gore & Assocs., Inc. v. Garlock, Inc., 721 F.2d 1540, 1551, 1553, 220 USPQ 303, 311, 312-13 (Fed. Cir. 1983)). "It is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious." In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992)(citing In re Gorman, 933 F.2d 982, 987, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991)).

We also note the following principles from In re Dembiczak, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999) (exemplary citations omitted).

The range of sources available, however, does not diminish the requirement for actual evidence. That is, the showing must be clear and particular. See, e.g., C.R. Bard, 157 F.3d at 1352, 48 USPQ2d at 1232. Broad conclusory statements regarding the teaching of multiple references, standing alone, are not "evidence."

Although couched in terms of combining prior art references, the same requirement applies in the context of modifying such a reference. Here, the examiner's broad, conclusory opinion of obviousness does not meet the requirement for actual evidence.

Because Mansour does not address reinstating traffic to its original route once a failed link has been restored at all, we are not persuaded that teachings from the applied prior art would appear to have suggested the claimed limitations. The examiner fails to establish a prima facie case of obviousness. Therefore, we reverse the rejections of claims 1-42 as obvious over Mansour.

CONCLUSION

In summary, the rejection of claim 1-42 under 35 U.S.C. § 103 as obvious over Mansour is reversed.

REVERSED

JERRY SMITH)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
LEE E. BARRETT)	APPEALS
Administrative Patent Judge)	AND
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LANCE LEONARD BARRY)	
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APPEAL NO. 1998-1473 - JUDGE

APPLICATION NO. 08/493,741

APJ BARRY - 2 copies

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APJ JERRY SMITH

DECISION: **REVERSED**

Prepared By: APJ BARRY

DRAFT SUBMITTED: 2 Oct 00

FINAL TYPED:

Team 3:

I have typed almost all of this opinion.

Please provide insertions where needed including the mailing address.

Please check spelling, cites, and quotes.

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